

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

In the matter of:) DOCKET NO. S-21164AA-21-0321
MARKETING DYNAMICS, INC, an Arizona corporation,)
TIMOTHY THOMAS LA DUCA (CRD #5223921), and SHARON LA DUCA, husband and wife,) NOTICE OF OPPORTUNITY FOR HEARING
Respondents.) REGARDING PROPOSED ORDER FOR
) RESTITUTION, ORDER FOR
) ADMINISTRATIVE PENALTIES, AND
) ORDER FOR OTHER AFFIRMATIVE
) ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Marketing Dynamics, Inc., and Timothy La Duca have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Timothy La Duca is a person controlling Marketing Dynamics, Inc. within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Marketing Dynamics, Inc. for its violations of the antifraud provisions of the Securities Act.

I.**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.**RESPONDENTS**

2. Marketing Dynamics, Inc. ("Marketing Dynamics") is a corporation organized under the laws of the state of Arizona on December 21, 2000. Marketing Dynamics has not been registered with the Commission as a securities salesman or dealer.

3. Timothy Thomas La Duca ("La Duca") is an Arizona resident and was an Arizona resident between at least December 2012 and December 2018. La Duca has been the Director and President of Marketing Dynamics since it was founded in 2000. La Duca has been a licensed Arizona insurance producer since October 20, 1997, license number 3164478. La Duca has not been registered with the Commission as a securities salesman or dealer.

4. Sharon La Duca has been the spouse of La Duca since 2005. Respondent Spouse is joined in this action under A.R.S. §44-2031(C).

5. At all relevant times, La Duca and Sharon La Duca were acting for their own benefit and on behalf of and for the benefit of the marital community.

6. Marketing Dynamics and La Duca may be referred to collectively as "Respondents."

III.**FACTS**

7. During the relevant time period, Marketing Dynamics held itself out as providing insurance services, and it offered and sold products such as life insurance and annuities.

8. Beginning in December 2012, La Duca and Marketing Dynamics began to solicit individuals to invest in debentures issued by companies controlled by EquiAlt, LLC, including EquiAlt Fund, LLC ("Fund I"), EquiAlt Fund II, LLC ("Fund II"), and EA SIP, LLC.

9. Debentures issued by the aforementioned companies will be collectively referred herein as "EquiAlt Debentures." EquiAlt, LLC, Fund I, Fund II, and EA SIP, LLC, will be collectively referred herein as "EquiAlt," and those who invested in the EquiAlt Debentures will be referred herein as "Investor(s)." EquiAlt Debentures were not registered with the Commission.

1 10. EquiAlt Debentures promised a fixed rate of return of 8% or 10% annually, and
2 Investors had the option to receive interest payments monthly, annually, or to re-invest their rate of
3 return.

4 11. Respondents sold at least 22 EquiAlt Debentures to Investors, totaling at least
5 \$1,838,789.96 invested. Most, if not all, Investors were Arizona residents and at all relevant times,
6 La Duca was located in Arizona.

7 12. From at least January 2013 through at least December 2018, La Duca and/or
8 Marketing Dynamics earned commissions for sales of EquiAlt Debentures totaling at least
9 \$84,216.95.

10 13. According to La Duca, he conducted his business through Marketing Dynamics. La
11 Duca contracted with EquiAlt for commission payments for the sale of EquiAlt Debentures through
12 Marketing Dynamics.

13 14. La Duca and Marketing Dynamics solicited EquiAlt Debentures to prospective
14 Investors without any limitations on the offers or sales. La Duca used advertisements for certificates
15 of deposit (CDs) as a “door opener” in order to “present [EquiAlt Debentures] to every prospect.” La
16 Duca solicited other Investors by “cold calling” and offering investments in EquiAlt Debentures. So
17 long as a potential investor was willing and able to invest the minimum investment amount, \$25,000,
18 there were no other limitations to investing.

19 15. EquiAlt sent documents to Marketing Dynamics and La Duca to distribute to potential
20 Investors. La Duca provided at least some, if not all, of the Investors with marketing material
21 (“Brochures”) that advertised EquiAlt Debentures as an “[o]ppportunity to make investments in whole
22 distressed Single Family Real Estate focused on equity [sic] on acquisition [sic] buying and buy-to-
23 rent strategies.” Before the Brochures were printed and provided to Investors, La Duca assisted Barry
24 Rybicki (“Rybicki”), the Managing Director for EquiAlt, with the content of the Brochures.

25 16. La Duca provided at least some Investors with EquiAlt’s private placement
26 memorandum (“PPM”), subscription agreements (“Subscription Agreement(s)”), and summary of

1 terms ("Summary of Terms"). Prior to executing an investment, most prospective investors received
2 only the Brochure and/or other marketing material; the PPM, Subscription Agreement, and Summary
3 of Terms were mailed to Investors by EquiAlt after their investment. The PPM was available for a
4 prospective investor to review before their investment "if they wanted to."

5 17. The PPM stated Investors would receive an 8 or 10% return on their principal, which
6 would be paid monthly, semi-annually, or re-invested during a 3- to 6-year term. These terms were
7 summarized in the Summary of Terms.

8 18. The PPMs also stated that the purpose of the investment was to generate capital for
9 EquiAlt to "purchase, improve, lease and/or dispose of distressed real property, enter into
10 opportunistic loan transactions and/or engage in other ventures."

11 19. Some Investors provided their investment money for EquiAlt Debentures directly to
12 La Duca. La Duca also helped facilitate the movement of some Investors' money from their self-
13 directed IRA into EquiAlt.

14 20. At least one Investor did not understand what EquiAlt Debentures were, and thought
15 she was purchasing a CD when she invested in EquiAlt.

16 21. At least some Investors would be negatively impacted if they lost the money they
17 invested in EquiAlt. One Investor invested her entire retirement savings into EquiAlt Debentures.
18 This Investor told La Duca prior to investing that she wanted to split her retirement savings between
19 EquiAlt Debentures and annuities; however, La Duca recommended she invested her entire
20 retirement savings in EquiAlt Debentures for a 10% return, first. Without her retirement, this Investor
21 now lives off of Social Security payments. Another Investor had explained to La Duca she did not
22 want "all [her] eggs in one basket" when discussing investing in EquiAlt; without the money invested
23 in EquiAlt, this Investor now lives month-to-month.

24 22. Many Investors did not have investment experience and/or did not qualify as
25 accredited investors.
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1 23. On February 11, 2020, the Securities and Exchange Commission (“SEC”) filed a
2 complaint in the U.S. District Court for the Middle District of Florida against EquiAlt, Fund I, Fund
3 II, EA SIP, LLC, and related parties. In its complaint, the SEC alleged that EquiAlt has been
4 conducted as a Ponzi scheme since 2011 and has raised over \$170 million from over 1,100 investors.

5 24. On February 14, 2020, the judge in the SEC case issued an order appointing a receiver
6 for EquiAlt to take immediate possession of all EquiAlt property, assets, and estates.

7 **Untrue Statements and Omissions by La Duca and Marketing Dynamics**

8 25. Subscription Agreements for the EquiAlt Debentures specifically state that the “Units
9 are being sold through the Company without commission.” Respondents omitted to tell at least some
10 of the Investors that they were receiving commissions for the sale of EquiAlt Debentures.

11 26. La Duca misrepresented to at least some Investors the risk involved with investing in
12 EquiAlt Debentures. La Duca told one Investor “[t]he EquiAlt fund is safe, liquid and earning 8%
13 every year.” La Duca told another Investor, when she told him she had “such bad vibes about
14 EquiAlt,” that “[y]ou [*sic*] money is safe.” However, EquiAlt Debentures were “highly speculative”
15 and involved a “high degree” of risk.

16 27. Respondents misrepresented to at least some Investors the liquidity of EquiAlt
17 Debentures and the liquidity of EquiAlt. La Duca represented to some Investors they were able to
18 liquidate their investment prior to the end of the investment term. One Investor was provided a
19 document that stated she would receive “100% return of Principal at any time.” However, the
20 Subscription Agreement stated, “the Subscriber may not be able to liquidate his, her, or its
21 investment.”

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

28. From on or about May 2012, Respondents offered or sold securities and participated in and induced the sale of securities in the form of notes and/or evidence of indebtedness, within or from Arizona.

29. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

30. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

31. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

32. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

33. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents omitted to tell Investors that commissions would be paid, when in fact they had received at least \$84,216.95 in commissions from the sale of EquiAlt Debentures;

b) Respondents misrepresented to at least some of the Investors the risk involved with investing in EquiAlt Debentures; and

c) Respondents misrepresented to at least some Investors the liquidity of EquiAlt Debentures.

34. This conduct violates A.R.S. § 44-1991.

VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

14. From at least December 21, 2000, through the present, La Duca has been and/or held himself out as Director and President of Marketing Dynamics.

15. From at least December 21, 2000, through the present, La Duca directly or indirectly controlled Marketing Dynamics within the meaning of A.R.S. § 44-1999. Therefore, La Duca is jointly and severally liable to the same extent as Marketing Dynamics for its violations of A.R.S. § 44-1991 from at least December 21, 2000, through the present.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. §§ 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that Respondent and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action;

5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/securities/enforcement/procedure>.

X.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona

1 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
2 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
3 at <http://www.azcc.gov/hearing>.

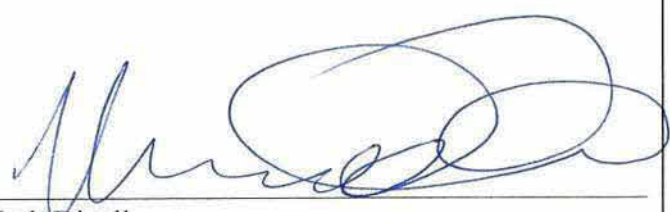
4 Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant
5 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
6 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
7 addressed to Elizabeth Schmitt.

8 The Answer shall contain an admission or denial of each allegation in this Notice and the
9 original signature of the answering Respondent or Respondent's attorney. A statement of a lack of
10 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
11 denied shall be considered admitted.

12 When the answering Respondent intends in good faith to deny only a part or a qualification
13 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
14 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an Answer
16 for good cause shown.

17 Dated this 28th day of September, 2021.

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19 _____
20 Mark Dinell
21 Director of Securities
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